

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5974 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MODERN SIZING FACTORY

Versus

UNION OF INDIA & OTHER.

Appearance:

MR DM THAKKAR for Petitioner

None present for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/07/96

ORAL JUDGEMENT

1. The grievance of the petitioner is that the railways refused to deliver a wagon load of steam coal consigned in favour of the petitioner. The prayers made by the petitioner in this Sp. Civil Application are as under:

- (A) YOUR LORDSHIPS be pleased to direct the respondents to deliver the coal wagon consigned in favour of the petitioner covered by the

railway receipt at annexure 'A' to the petition without further delay on the same freight and on the same charges as would have been payable by the petitioner had the wagon arrived in time and delivery of the same given at Asarva Goods Yard.

- (B) YOUR LORDSHIPS be pleased to direct the railway administration, as and by way of an interim direction pending the admission of this petition, to undertake an enquiry to find out as to when, where and to whom the coal wagon in question has been delivered and such an enquiry shall be completed within three months from today. If at the completion of the aforesaid period of three months, the railway administration is unable to trace the whereabouts of wagon as to whom, how and when it has been delivered or in case if at the completion of the enquiry it transpires that the coal wagon was diverted for the use of the railway administration itself on any of its various railways or the same had been diverted to any public undertaking or power house, the railway administration shall recoupe the same quality and quantity of coal covered by the railway receipt at annexure 'A' to the petition within two weeks from the date of completion of the enquiry as directed above. However, if on completion of the enquiry, it transpires that the wagon in question was diverted in favour of a private party, the respondents shall file an affidavit as to the date and the name of the party to whom the wagon under the railway receipt in question was diverted to a party other than the consignee. The said affidavit shall be filed within two weeks after the completion of three months period granted for tracing the wagon in question.

2. Reply to this Sp. Civil Application is not filed. Somewhat identical matter has come up before this Court earlier, and the order passed by this Court in the case of (The) Ashoka Mills Limited V/s. Union of India and others reported in 1984 G.L.H. (U.J.) 56. The interest of justice will be served in case this Sp. Civil Application is disposed of with the direction as it has been given by this Court in the case of Ashoka Mills Ltd. v/s. Union of India (supra). The respondents are directed to hold an enquiry and complete the same within a period of three months from the date of the receipt of the writ for the purpose of finding out as to what happened to the wagon in which the coal of the petitioner

was booked. If as a result of the said enquiry it is found that the said coal was diverted for the use of the respondents or for the use of some other public authority or undertaking, then the respondents shall, within a period of three months thereafter, deliver the same quantity and quality of coal to the petitioner without charging any extra freight and cost. In case it is found that the coal was not so diverted, but the wagons were either lost or delivered to a wrong party, then in that case, the respondents will pay compensation to the petitioner within a period of six weeks thereafter, subject to verification and the petitioner producing the relevant documents in that behalf before the concerned officer. Rule is made absolute in the aforesaid terms with no order as to costs.
